

We should not have a double standard where our brave men and women in uniform go to jail and high-ranking political appointees are not held accountable. What kind of message does that send to our soldiers?

If we eliminate habeas corpus for detainees at Guantanamo, we will put our troops in the impossible position of serving as jailers for men who are indefinitely detained with no ability to challenge their detention.

Think about that for a moment. If there were an American employee or an American citizen or an American soldier being held in a foreign place with no charges against them, indefinitely, with no recourse under the law, we would be protesting in the strongest terms.

The American people want us to bring the planners of 9/11 to justice. That should be the focus of our legislation, not giving amnesty to administration officials and not immunizing the administration's policies from judicial review.

These provisions fail two crucial tests. They are inconsistent with American values, and they would put our troops at risk. They must be changed.

I look forward to the consideration of this bill on the Senate floor with amendments to be offered to make these changes so that we can come forward with a bipartisan bill, a bill that will make America safer but not at the expense of our basic values.

I yield the floor.

(The remarks of Mr. DOMENICI pertaining to the introduction of S. 3962 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Mississippi.

MILITARY COMMISSIONS ACT OF 2006

Mr. LOTT. If I could speak on this very important issue addressed previously by the Senator from Illinois, the Military Commissions Act of 2006, I have been restrained in making comments on this process, although I admit I have had to bite my lip a few times because I believed the process that was underway was responsible.

Let me go back and talk a little bit about the beginnings of why this act is necessary and where we are now. We have been in some very difficult times and some uncharted waters when it comes to the war on terror since September 11. It has challenged us in many ways to deal with problems we have not had to deal with before, with an amorphous enemy which does not line up in uniform, in rank, but takes the vehicle of suicide bombers or roadside bombs—the worst of all possible attacks on innocent men and women and children—with no uniform, with no concern for what it does to these innocent people, not to mention those who are trying to bring about greater peace

and democracy and opportunity and security in the world, in Afghanistan and Iraq and the Middle East and, yes, here at home.

We are working through this as we go forward. These are unique times. In this process, we have been able to capture and deter some of the worst of the worst jihadists in the world, intent on killing our soldiers and innocent men and women. We have had to deal with them. These are not people who ordinarily have been captured who would be covered by the Geneva Conventions. They are not serving in a country's military; they are murderers of the worst sort.

We have had to deal with this issue. This administration has dealt with it. They have done it responsibly. Have they made some mistakes? Why, of course; we are human beings.

All of this led to a very unfortunate Supreme Court decision, referred to—again, unfortunately—as the Hamdan decision. The Supreme Court clearly made a mistake. I must admit I was disappointed in some of the rulings of the judges, but it has forced our hand to try to make it clear in the law and with the administration how we are going to deal with this question of interrogating these terrorists, how we are going to deal with some of the evidence that is acquired through that process. The administration has been working with the lawyers, with the Congress, and with the Senate to try to work through this issue.

Some people were very distraught last week that we seemed to be having disagreement within our own ranks on the Republican side of the aisle where three or four Senators or some Senators had some concerns. I felt very differently. Finally, we were dealing with issues that really matter. Questions of law, how we deal with the terrorists, how we deal with the evidence—these are very serious discussions, the kinds of things the Senate should be doing a lot more of.

While one can disagree with who was doing what, we went through a process, took up legitimate questions of the law—how to deal with the Geneva Convention; how is it perceived—and came to an agreement. I still had my doubts. There are parts I still do not particularly like. I thought it was a very good process, with a lot of different people, a lot of lawyers, a lot of military people, a lot of leadership in the Congress, and they came up with a conclusion. I have had occasion now to take a look at what they came up with, had questions about, and it is pretty good. However, it is an area where we must act because if we do not act, we are not—the administration, the Government—going to know how to deal with interrogation or with the terrorists or how to deal with the evidence. This is a case where we do not have the luxury of not dealing with this issue. We have to do it.

In some other areas, we should act. The electronic wiretaps matter—we should deal with that, but we don't

have it. We can go forward on the law as it is. In this case, we have to clarify the situation, or these people who are being held in Guantanamo Bay are going to be hanging in limbo. If you are worried about them, which I am not particularly, there needs to be a process of how we will deal with them.

That is how we got where we are. That is now pending as an amendment to the border security bill that provides for a fence along our southern border with Mexico. That is not the way it should be done. It should be considered clean. But it is typical of what has happened all year long in the Senate. The whole operation from the other side of the aisle is delay it, drag it out, don't cooperate. Why can't we at least debate? Why have we gone through a day and a half of nothingness instead of considering and debating the substance of the amendment which should be a bill and also the substance of border security? Does anyone here want to leave to go home for an election period—and that is what this is really all about—without having addressed how we do the military trials and without having done something more significant about border security? Not me, although I suspect there are some who say: Yes, let's don't let anything happen; then we can blame Senators, certain people, leaders, whatever, the administration, because nothing happened. Nice deal if you can pull it off. I don't believe the American people will buy that deal.

Also, in listening to some of the comments in the Senate, it stuns me. First of all, I am an attorney. I have not practiced for a long time. I find myself now involved in a lawsuit. Whenever they say, "Bring on the lawyers," look out, because now we are going to get into a huge, big discussion of the niceties of trials and evidence and all of that, and we are guaranteed to have a lot of confusion moving forward.

I wish to again emphasize what we are dealing with. We are dealing with, I believe Colin Powell was quoted as saying, the most vicious killers in the world. These are bad people. These are the people who admit they are jihadists. And if they get out, they would do everything to kill Americans, Europeans, Asians—anyone they think does not agree with their religious positions. These are not citizens, these are not employees of the government, and these are not soldiers. These are extremist jihadists of the worst sort.

Now we have people worrying about how they are going to be incarcerated or interrogated or what evidence would be admissible. Lawyers can work that out. I know enough about the law to know that judges and juries can decipher the legitimacy of evidence and how it was obtained. The parsing we have been through is a disgrace, in my opinion.

In terms of the interrogation, yes, we have to be concerned about our treaty obligations. Our President and our Government have to be concerned

about that. Senators, too. We have already voted, and I voted, to clarify our position that we are opposed to torture. I voted for the McCain position. But now, what we are arguing over, I am concerned. What are we going to do in terms of interrogation to get information that can save one marine's life or thousands of innocent people? Are we going to ask them: Please, pretty please? When they let on like some of the techniques that have been used are such horrible things—being threatened by a dog? Come on. Have they never delivered laundry to someone's house and had a dog come after them? Have they never lived? Now being threatened by a dog is considered what—torture? Oh, by the way, we can't have them in stressful positions. What is that? You mean like standing up? Some of these complaints are absolutely ludicrous. Are we going to be careful not to insult them in some way? How are we going to get this information?

And by the way, now our men and women who have to find a way to get information from these worst of the worst vicious killers in the world could be liable, and even worse than that, when they thought they were complying with the law as they understood it and as their superiors told them, they could be liable to be tried—after the fact.

This legislation at least says that prospectively, here is going to be what is expected. If you exceed this, if you get over into the torture area, yes, you will be liable. But to go back and say, now, wait a minute, what you did could make you liable, when we have people trying to do their job for the American people—our soldiers in Iraq and Afghanistan now could be sued, and there are complaints that we are not going to make sure these people are not going to be, after the fact, *ex post facto*, tried? These same people are talking about amnesty for people illegally in America. Yet when they talk about amnesty for people doing their job as best they could, as they understood the law, no, we do not want to give them amnesty. That would be a horrible mistake, if we do not provide some clarity and some protection for those who may have exceeded that clarity in the past even though they understood what they were doing was wrong.

Now we have this huge discussion about habeas corpus. Bring on the lawyers. What a wonderful thing we can do to come up with words like this. Our forefathers were thinking about citizens, Americans. They were not conceiving of these terrorists who are killing these innocent men, women, and children. These are not citizens. These are not people in America. We want them turned loose arbitrarily and then on the other hand turn around and, say, criticize the administration because some people who were caught in this process were subsequently released when you find out maybe they shouldn't have been?

Ladies and gentlemen, this is the political season, I am sorry to say. I would have thought the Senate could rise above all this partisan political stuff. Everybody is trying to rewrite history or rewrite the law or prove a mistake was made or this intelligence was available which was different from that intelligence. Who is taking the time and looking at where we are now? Where do we want to be? How are we going to handle interrogations? How are we going to handle evidence? How are we going to do a better job for our men and women in the decisions we make in Iraq and Afghanistan? Who is looking for the future around here? No, we are all throwing political spears at each other. I don't think the American people appreciate that. It is embarrassing, quite frankly, to me.

I have been on the Intelligence Committee for 4 years, and for 4 years we have been going back trying to refigure the intelligence. We have found out the intelligence we were receiving in that committee—the Senators, Congressmen, and the President—was not as good as it should have been. Okay, good. Admit that. Now what are we going to do about it? How many hearings do we have where the CIA and the Director of National Intelligence were asked: What are you doing to implement the law we put in place to address the problems we found? Where are we going to be in the future? What have we done to actually go to meet with our CIA agents around the world and hear what the real country situation is in critical parts of the world? Not one time have we done that.

No, even the Intelligence Committee, which for years the Senate worked to make sure it stayed nonpartisan, bipartisan, and worked together for the good of the country, in close quarters, now is just another partisan committee. Staff fight each other; intelligence information is leaked; classified intelligence information is leaked to the New York Times and the Washington Post. No one is identified. No one is punished for that.

What worries me, this is not just about politics; this is about people's lives. People get killed based on the intelligence we get or don't get or the oversight we have.

I hope we can complete our work. Hopefully, it will be good work by the end of the week.

Let's go home and get this political period over with, but when we come back next year, I think it is time we assess where we are. How are we going to do a better job? What is America's agenda? What can we do together in a bipartisan way? Is there anything left? And if we do not, I think there will be a pox on all of our houses.

So on this particular subject of the Military Commissions Act of 2006, let's get it up, let's debate it, and let's have a vote. We have to do it. I think they have done pretty good work. If I could get in a room with my lawyers, yes, I would write it differently. I think more

of that evidence should be admissible with less restraints. I think more of the techniques that have been used in the interrogation of terrorists should be used than are in this provision. Once again, it is not perfect, but it is good enough. It is the right thing to do.

Madam President, observing no Senator wishing to speak at this time, I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. MURKOWSKI). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. MURRAY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. MURRAY. Madam President, I ask unanimous consent to be allowed to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEMANDING ACCOUNTABILITY

Mrs. MURRAY. Madam President, the hardest decisions we make in the Senate involve asking our fellow Americans to risk their health and their lives in defense of our country. The cost to our country, to our communities, and to our families is so great that in any war we have an obligation to make sure we are doing right by our service members, by our veterans, and by our country.

That is why we in this Congress need to ask questions. We need to ask questions such as: Do our troops have a clear mission? Is there a plan to achieve that mission? Do our troops have the support and equipment they need to succeed? Do we have the right people in place? And are we taking care of our veterans when they return home from military service?

For too long, this Congress has not done its job of asking those questions and demanding answers. Here in Congress, we have a responsibility. We have a responsibility to make sure the Bush administration, or any administration, is fulfilling those critical requirements. So today I rise to offer an update on where we stand on some of these questions and to share some disturbing news from recent reports. The evidence I am going to share with my colleagues today points to five disappointing conclusions, and they all demand hearings and they demand accountability.

First of all, the Bush administration misled Congress about its failures in planning for the care of America's veterans.

Secondly, the Bush administration still does not have a plan to care for our veterans.

Third, we do not have a clear mission in the war in Iraq. And that fight has greatly impacted our ability to prosecute the broader war on terror and, according to the latest intelligence estimate, has helped to fuel new terrorist recruits.